

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**HIGH PLAINS DAIRY LLP  
Facility #60531**

**Osceola County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2014-AFO- 01

TO: Gene Hoyer  
High Plains Dairy LLP  
5523 260<sup>th</sup> Avenue  
Sanborn, Iowa 51248

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and High Plains Dairy LLP (High Plains) for the purpose of resolving a violation resulting from a manure discharge from the High Plains' facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**  
Lois Benson, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall – 1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**  
Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**  
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. High Plains is a confinement feeding operation currently under expansion to a maximum capacity of 2,800 head mature dairy animals. The facility is located at 5523 260<sup>th</sup> Avenue, Sanborn, Iowa (NE ¼ of the NW ¼ of Section 33, Goewey Township, Osceola County, Iowa). The manure handling system consists of a flume system that flushes effluent from the earthen basin to a concrete sand lane that removes the sand bedding. The manure and effluent then gravity drain into a formed concrete reception pit which then pumps it into two narrow manure storage basins.

2. On September 30, 2013, DNR Field Office 3 received a phone call on the office answering machine at 7:05 a.m. from Gene Hoyer, managing agent for High Plains, stating that there had been a pump malfunction resulting in a manure release at High Plains. Lois Benson, DNR Field Office 3 environmental specialist, arrived at work at 8:00 a.m. and spoke to Mr. Hoyer on the telephone. Mr. Hoyer asked for the field office's assistance. He stated that he thought the spill could be as large as 200,000 gallons and had reached the creek, an unnamed tributary to the Floyd River, to the west of the facility. The creek had clearly defined banks and the ability to carry water, but was dry on the day of the release. Mr. Hoyer said that a dam was placed before a set of culverts in the field about ¾ of a mile away to stop the manure flow.

3. Ms. Benson and Tom Roos, DNR Field Office 3 environmental specialist senior, arrived at the High Plains' facility. Schreier Pumping, Inc., certified applicators, were pumping out manure from the dammed area and land applying according to the manure management plan. The applicator stated that 70,000 gallons of manure had already been injected. A facility employee gave the field office personnel a tour of the facility and showed the field office personnel the sand lane pump that had malfunctions causing the manure release. The facility personnel explained that the flume pump runs constantly to flush rinse water through the barns and rinse the sand. The sand lane pump is normally triggered to run on when needed, but the switch failed and the sand lane overflowed. This created spillage on both sides of the concrete sand lanes, which eventually flowed to the west and reached the dry creek bed. Although the release was stopped at 6:30 a.m. the manure continued to flow downstream. The facility used a vacuum truck to remove manure at various locations along the creek. The field office personnel stayed on site and provided assistance throughout the day. By the time the field office personnel left the site late in the afternoon, the manure applicators estimated that 450,000 gallons of manure had been released.

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4. On October 1, 2013, Field Office 3 personnel returned to the facility and spoke to Mr. Hoyer. Mr. Hoyer stated that the applicators were still pumping the dammed area. The applicators periodically stopped pumping and allowed the manure to drain down to the area. The field office personnel verified that the majority of the manure had been removed from the creek; the field office personnel authorized the facility to begin pumping clean water to flush the creek bed. It took several hours for the clean water to reach the dammed area. When the field office personnel left the site at the end of the day, they told the applicators to continue pumping and injecting the diluted manure. The field office personnel also verified that the facility had adequate usable acres remaining for proper manure application in accordance with the facility's manure management plan.

5. On October 2, 2013, Ms. Benson spoke to Mr. Hoyer on the telephone. He informed Ms. Benson that the dam had been compromised by seepage from underneath. Ms. Benson told Mr. Hoyer that no manure could be allowed to go through the culverts and get any further downstream. He stated that a dirt dam would be constructed further downstream. Ms. Benson visited the facility several times throughout the day. Facility personnel pumped the manure through the day as well as the clean water that was available. The facility personnel were actively injecting the diluted manure. Ms. Benson noted that the path of manure that had been double rinsed was much cleaner. Rain was in the forecast so Ms. Benson instructed the facility personnel to leave the dams in place and monitor the situation. The facility personnel estimated the total amount of manure released at one million gallons.

6. On October 3, 2013, Ms. Benson spoke to Mr. Hoyer on the telephone. He informed Ms. Benson that the applicators had pumped and injected manure until 10:00 p.m. the previous evening and continued to pump and inject manure during the morning of October 3. Mr. Hoyer explained that the dam was repacked in from the culvert and it was holding well. Mr. Hoyer said that there was no additional seepage. Mr. Hoyer stated that he was in the process of looking at the electrical controls for the pump system and how to install further safeguards to prevent another occurrence.

7. On October 25, 2013, DNR Field Office 3 issued a Notice of Violation letter to High Plains for the manure discharge. The letter notified the facility that the matter was being referred for further enforcement.

8. Following the incident the facility made several improvements to ensure that future releases do not occur. The facility installed a flood light in the area of the sand lane and until all controls have been installed, the staff is performing visual checks every two hours. The facility is in the process of installing a concrete post with a strobe light and a horn dialer system that will automatically call facility personnel if there is a system failure. The facility is also constructing a berm as a secondary precaution that will reach from the south edge of the feed storage to

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the west edge of the basin. When the berm is completed it will hold one million gallons of manure.

9. The facility had a previous discharge in 2009. In December 2009, DNR Field Office 3 noted a manure release from a concrete pit. The manure flowed to a grassy area but did not reach a water of the state. The facility was issued a Notice of Violation letter for failing to contain all manure and for failing to notify the DNR of the release. Following this incident, the facility made improvements to increase the amount of winter storage.

10. A manure release occurred at the facility on September 24, 2013 when a commercial applicator had a cut hose. Mr. Hoyer notified the DNR that the commercial applicator the facility had hired notified him of the manure release. The manure was vacuumed up, land applied, and the remaining manure was disked in at the spill location. The manure release did not reach a water of the state. The commercial applicator was issued a Notice of Violation for the manure release and failing to notify the DNR of the release.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 3's investigation it was determined that manure from the High Plains' facility had been discharged from the sand lane flowing to the dry creek bed. The above facts indicate a violation of this provision.

3. Based on the information provided by High Plains and the observations made by DNR Field Office 3 at the facility, the DNR has determined that there is no likelihood that the violation identified in Paragraph 2 Section IV. Conclusions of Law will recur if High Plains implement the remedial requirements set forth in Paragraph 8, Section III. Statement of Facts of this administrative consent order.

#### **V. ORDER**

THEREFORE, the DNR orders and High Plains agrees to do the following:

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1. High Plains shall submit a report to DNR Field Office 3 demonstrating the completion of the improvements noted in Paragraph 8, Section III. Statement of Facts within 60 days of the date the Director signs this administrative consent order; and
2. High Plains shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The economic benefit gained by High Plains is minimal. While High Plains gained an economic benefit by not having adequate controls and alarms in place to prevent the discharge, the cost of additional custom application from flushing and rebuilding the field where the dam was located have greatly diminished the economic benefit that High Plains may have received. Based on the above facts, a minimal economic benefit of \$100.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Although the release was accidental and the facility took immediate steps to stop the release, a large amount of manure was released despite the efforts

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by the facility. The violation threatens the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Due to the size and magnitude of the release, the DNR Field Office was required to expend a large amount of staff time responding to and assisting the facility with the release. Therefore, \$2,900.00 is assessed for this factor.

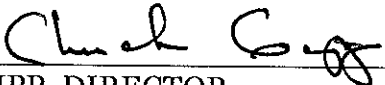
Culpability – High Plains has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$2,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of High Plains. For that reason High Plains waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 10<sup>th</sup> day of  
March, 2014.

 Managing Agent HPD  
HIGH PLAINS DAIRY LLP

Dated this 26th day of  
February, 2014.

Facility #60531; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.a